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Nos. 42 and 48

In the Supreme Court of the United States

OCTOBER TERM, 1930

STATE OF UTAH, PETITIONER

v.

UNITED STATES OF AMERICA

CARB[illegible] COUNTY LAND COMPANY, A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 849

STATE OF UTAH, PETITIONER

v.

UNITED STATES OF AMERICA

No. 877

CARBON COUNTY LAND COMPANY, A CORPORATION, petitioner

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

Both petitions are for a review of the same decree. The District Court did not render any opinion. The opinion of the Circuit Court of Ap-

peals (No. 849, R. 582–597; No. 877, R. 80–94) is not reported.

JURISDICTION

The decree of the Circuit Court of Appeals was entered January 14, 1931. (No. 849, R. 597–598; No. 877, R. 94–95.) The petition for certiorari in No. 849 was filed April 6, 1931, and that in No. 877 was filed April 13, 1931. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether under the circumstances hereinafter set forth the United States is entitled to a decree against the State of Utah quieting its title to certain public lands certified to the State during the years 1900 to 1904 upon fraudulent representations of the State's grantees.

STATUTE INVOLVED

Section 8 of the Act of March 3, 1891, c. 561, 26 Stat. 1095, 1099 (U. S. C., Title 43, Sec. 1166), provides in part:

> SEC. 8. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annual [annul] patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. * * *

STATEMENT

Certiorari is sought to review a decree of the Circuit Court of Appeals ordering some of the petitioners to convey certain land to the United States. The decree was entered after a hearing on amended bill, answer, and other pleadings and proofs. This Court has held that the motion to dismiss the original bill of complaint in this case should be denied. *Independent Coal & Coke Co.* v. *United States,* 274 U. S. 640.

The events leading up to the present phase of the instant case are summarized in that opinion (pp. 642–644), as follows:

> The United States, in 1894, made a grant of public lands to the State of Utah to aid in the establishment of an agricultural college, certain schools and asylums and for other purposes. * * * Mineral lands were not included. * * * The grant was not of lands in place. Selections were to be made by the state with the approval of the Secretary of the Interior, from unappropriated public lands, in such manner as the legislature should provide. The legislature * * * later created a board of land commissioners with general supervisory powers over the disposition of the lands and with authority to select particular lands under the grants.
>
> During the period from December 10, 1900, to September 14, 1903, Milner and others, the predecessors in interest of the Carbon County Land Company, one of the

petitioners, made several applications to the State Commission to select and obtain in the name of the state the lands now in question, and at the same time entered into agreements with the Commission to purchase the lands from the state. In aid of the applications and agreements, Milner and his associates filed affidavits with the Commission stating that they were acquainted with the character of these lands which they affirmed were nonmineral and did not contain deposits of coal. They also deposed that the applications were not made for the purpose of fraudulently obtaining mineral holdings, but to acquire the land for agricultural use. The applicants were obviously aware that the affidavits or the information contained in them would in due course be submitted to the Land Office of the United States with the State Commission's selections, as they were in fact. On the faith of these and other documents, the selections were approved by the Secretary of the Interior and the tracts in question were certified to the state on various dates, the last being in December, 1904. Certification was the mode of passing title from the United States to the state.

In January, 1907, the United States brought the first suit, against Milner and his associates and the Carbon County Land Company, which had been organized by Milner to take over the land, and was controlled by him. The suit was founded on the charge that the certifications were procured by the fraudulent misrepresentations of Milner and the others since they knew at the time

of the applications that the lands contained coal deposits. Although the bill in the present case states that the relief asked was the cancellation of the contracts between the state and Milner and his associates, this allegation is apparently inadvertent, for the record elsewhere indicates that the bill in fact sought the quieting of the government's title. It affirmatively appears that on June 8, 1914, the district court entered a decree declaring that the United States "is the owner" and "entitled to the possession" of the lands in question and that the defendants "have no right, title or interest, or right of possession," and perpetually enjoining them "from setting up or making any claim to or upon said premises." The Court of Appeals, in affirming the decree, held that "the whole transaction was a scheme or conspiracy on the part of Milner to fraudulently obtain the ownership of the lands from the United States." [*Milner* v. *United States*, 228 Fed. 431; appeal dismissed, 248 U. S. 594.]

The State of Utah was fully advised of the filing of the original suit in 1907 by the United States. (See footnote 4, p. 14, *infra*.)

Notwithstanding the decree entered in 1914, the State of Utah, in January, 1920, entered into a new contract with the Carbon County Land Company, whereby the State agreed to sell and the company to buy the lands in question for $100 per acre.[1]

[1] The original contract called for a purchase price of $1.50 an acre (No. 849, R. 24, 298–311), all of which was apparently paid to the State. See pp. 11–12, *infra*.

Pursuant to this contract the State patented the lands to the Land Company on February 10, 1920. The Land Company gave its notes to the State for the entire amount of the purchase price, together with a mortgage securing its payment. Apparently no part of this purchase price has ever been paid. (No. 849, R. 27, 38, 52, 556–563; No. 877, R. 27.)

Thereafter, in October, 1920, the Carbon County Land Company sold certain of the lands to the Independent Coal & Coke Company, subject to a portion of the mortgage indebtedness of the Land Company to the State which the Independent Coal & Coke Company agreed to assume. (No. 849, R. 38, 52–53; No. 877, R. 27.) Prior to this transaction the Independent Coal & Coke Company was fully advised of the judgment and decree in the original suit by the United States against Milner and the Carbon County Land Company. (No. 849, R. 22, 392–409.)

In May, 1924, the United States filed a bill in the District Court (No. 849, R. 51; see *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 645) against the Carbon County Land Company and the Independent Coal & Coke Company seeking to hold those companies as trustees of whatever title they derived from the patent of the State to the Carbon County Land Company. Upon motion of the defendants the District Court dismissed the bill on the ground that the suit was barred by Section 8 of the Act of March 3, 1891, p. 2, *supra*,

which provides that suits by the United States to vacate and annul any "patent" shall be brought within six years after the date of the issuance thereof. Upon appeal the judgment of the District Court was reversed, the Circuit Court of Appeals holding that the Act of March 3, 1891, did not bar the action, and that the allegations of the bill, if proven, entitled the United States to the relief sought. *United States* v. *Carbon County Land Co.*, 9 F. (2d) 517 (C. C. A. 8th). On certiorari this Court affirmed the decision of the Circuit Court of Appeals. *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, *supra*. At that hearing the Attorney General of Utah filed a brief in this Court as *amicus curiae* in behalf of the State.

Thereafter the United States, following the suggestion of this Court, filed an amended bill. (No. 849, R. 1–6; No. 877, R. 1–5.) Answers were filed by the defendant companies asserting that the State of Utah was not bound by the 1914 decree; that at the time of the original certifications to the State the lands in question were not known to be mineral lands; that prior to the contract entered into in 1920 the State had acquired a new and unassailable title to the lands by reason of the Act of March 3, 1891; and that the claims of the defendants rested upon this new title. (No. 849, R. 19–32; 44–56; No. 877, R. 19–36.) The State of Utah, over the objection of the Government, intervened, claiming a mortgage lien upon the lands under the mortgage ex-

ecuted to it by the Carbon County Land Company in February, 1920. The claim of the State was predicated upon substantially the same grounds as were set forth in the answers of the defendant companies. The State also pleaded laches, and asserted that the Government was estopped to maintain the suit by reason of statements made to its Board of Land Commissioners by counsel for the Government at the time of the original action by the United States. (No. 849, R. 33–41.) The United States filed an answer to the complaint in intervention of the State in which it prayed that the mortgage be cancelled, that the title of the United States be quieted as against the State, and in the alternative, that the certifications originally made to the State of Utah be cancelled. (No. 849, R. 65–85.) The State filed a replication to the answer of the United States, containing allegations similar to those contained in its complaint in intervention. (No. 849, R. 87–89.)

After a trial, at which considerable testimony was introduced as to whether the lands were known mineral lands at the time of the original certification (No. 849, R. 101–164), the District Court held that the State was the owner of the lands and decreed that its title be quieted as against the United States. The court further decreed that the patent issued in 1920 by the State to the Carbon County Land Company was void. (No. 849, R. 89–91.) On appeal the judgment of the District Court was reversed. (No. 849, R. 597–598; No. 877, R. 94–95.)

The Circuit Court of Appeals held that the State of Utah was bound by the adjudication of facts in the original action and, further, that, if not so bound, the evidence clearly established that the lands in question were mineral lands and that the original certifications had been secured by fraud, although the State was an innocent instrumentality in securing the certifications. The court found that no affirmative defense to the bill had been established, that the Carbon County Land Company was not a *bona fide* purchaser, that the Independent Coal & Coke Company knew all of the facts as to the original action by the United States when it purchased part of the land from the Land Company, and that since the State in 1920 had parted with the title and claimed only under the mortgage from the Land Company, it was bound as a privy of that company. On the assumption that the State, as the holder of a purchase-money mortgage, should be treated as one who had retained the title and simply contracted to sell, the court held that the State was bound in equity by the decree of 1914, since at the time of the institution of that suit it had been served by the Government with a copy of its bill of complaint, and hence had an opportunity to appear in such suit and defend its title. The court found that the State was in no sense a purchaser for value and that when it issued its patent in 1920 it knew that title had come to it by virtue of misrepresentations of fact made by the Milners and knew that such

fact had been adjudicated. The court further held that the action was not one to cancel the original certifications but was a suit in aid of the 1914 decree and hence was not barred by the Act of March 3, 1891. The court directed that a decree be entered declaring that the titles held by the two companies and the State are impressed with a trust in favor of the United States, ordering the defendant companies to convey such titles as they possess to the United States, and cancelling the mortgage lien and any tax or other liens on the lands held by the State, and quieting the title of the United States against the companies and the State. (No. 849, R. 582–597; No. 877, R. 80–94.)

The Independent Coal and Coke Company joins in the petition of the State of Utah for certiorari. (No. 849.) The Carbon County Land Company has filed a separate petition (No. 877).

ARGUMENT

The State of Utah contends (1) that it is not bound by the decree entered in 1914 in favor of the United States against the Carbon County Land Company and Milner since it was not a party to that suit; (2) that the present action is barred by Section 8 of the Act of March 3, 1891, p. 2, *supra*; and (3) that the original certifications obtained by Utah from the United States were not obtained fraudulently. The United States contends (1) that by virtue of the 1914 decree it became the equitable owner of the lands and all title of the

State of Utah therein, save the bare legal title, was extinguished; (2) that the United States is entitled to a decree quieting its title against the State of Utah, especially in view of the transfer of the legal title by the State to the Carbon County Land Company in 1920; and (3) that the Act of March 3, 1891, does not bar the suit.

The 1914 decree declared that the United States "is the owner" and "entitled to the possession" of the lands in question, and perpetually enjoined the Milners and the Carbon County Land Company "from setting up or making any claim to or upon said premises." (No. 849, R. 3–4.) This Court has already pointed out (in *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 643, 648) that by virtue of this decree the United States became the owner of all rights which the Land Company acquired under its original contracts with the State.

The land in question was originally sold by the State to Milner and his associates between the years 1901 and 1904, for $1.50 an acre. (No. 849, R. 298–311.) These contracts of purchase were assigned to the Carbon County Land Company, a corporation in which the Milners owned approximately all the stock. (No. 849, R. 200, 238, 356, 357.) The execution of these contracts and their assignment to the Land Company are conceded by the State of Utah. (No. 849, Pet. Br. p. 2.) Their validity is not here questioned by the State. By virtue of these contracts of sale and assignment the

Carbon County Land Company became the equitable owner of the property, the State of Utah retaining the legal title merely as security for the payment of the purchase price. *Independent Coal & Coke Co.* v. *United States, supra,* p. 644.

The purchase price called for by the original contracts was payable in ten annual installments. The evidence does not show whether these payments were made, but in the answer of the United States to the complaint in intervention of the State of Utah it is alleged that the "payments, as required under said contracts were made as therein provided."[2] (No. 849, R. 83.) This allegation was not denied by the State. (No. 849, R. 87–89.) The State of Utah does not assert here that any of the original purchase price now remains unpaid or was unpaid at the time of the entry of the 1914 decree, nor does it assert here a lien for any part thereof.

When, pursuant to a contract for the sale of real estate, the contract price has been fully paid, the entire title is equitably vested in the purchaser. *Jennisons* v. *Leonard,* 21 Wall. 302, 309. It seems clear, therefore, that at the time of the entry of the 1914 decree whatever interest the State obtained under the original certifications belonged in equity to the purchasers. On this date the Carbon County Land Company, as between it and the

[2] In *Milner* v. *United States,* 228 Fed. 431, 436 (C. C. A. 8th), *supra,* it is stated that "the payments as required by the contracts of purchase have been made as therein provided."

State of Utah, was the equitable owner of the lands, and whatever fortification, if any, of the State's title had meanwhile occurred through the running of the Statute of Limitations,[1] inured to the benefit of the Land Company. Accordingly we submit that the effect of the 1914 decree was to take from the Land Company and vest in the United States all interest which that company had acquired either by contract or through the running of the statute. All that remained in the State of Utah was the bare legal title.

Nothing happened after 1914 to divest the United States of its equitable title. The State of Utah does not contend that it stands in the position of a *bona fide* purchaser, and ~~that~~ neither the Carbon County Land Company nor its assignee, the Independent Coal and Coke Company, contends that ~~they are~~ it is a *bona fide* purchaser. The State obviously acquired no new rights by virtue of the patent of the land to the Carbon Coal Company in 1920 and the giving of a mortgage thereof by the Land Company to the State to secure the purchase price. Accordingly, the court below properly decreed that such titles as were possessed by the two companies and the State of Utah are impressed with a trust in favor of the United States, that the mortgage held by the State should

[1] Assuming that the 6-year statute of limitations of March 3, 1891, applies to certifications, that statute had run in favor of the State prior to the 1914 decree, since the latest of the certifications was in 1904.

be cancelled, and the title of the United States quieted as against the two companies and the State.*

But the State contends that the present suit, at least so far as it is concerned, is barred by Section 8 of the Act of March 3, 1891, p. 2, *supra,* which provides that "suits by the United States to vacate and annul any patent" shall be brought within six years after the date of the issuance "of such patents." This contention appears to be without merit.

In the first place, the statute applies only to suits to annul "*patents.*" The term patent has a very specific meaning in the land laws, signifying an instrument of especial solemnity, signed in the name of the President, countersigned by the Recorder of the General Land Office, and taking effect when it is recorded in books especially provided for that purpose. *United States* v. *Schurz,* 102 U. S. 378, 403; *United States* v. *Kern River Co.,* 264 Fed. 412, 416 (C. C. A. 9th). In the instant case the lands were not *patented* to the State of Utah, but *certified* to

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* Under this theory of the case it does not become necessary to consider whether the 1914 decree was conclusive against the State as to the title of the United States or as to the question whether the original certifications to the State were fraudulently secured. We submit, however, that in equity the State is bound by such decree. Although not a party to the suit in which the 1914 decree was entered, it had actual notice of such suit and an opportunity to appear therein and defend its title. The day after the complaint was filed a copy of the bill was served upon the State Board of Land Commissioners. (No. 849, R. 246.) This bill set

the State. The statutory provisions as to certifications are distinctly dissimilar to those as to patents. See Act of August 3, 1854, c. 201, 10 Stat. 346, reenacted without substantial change as Section 2449 of the Revised Statutes. Since statutes of limitations against the United States are to be strictly construed (*United States* v. *Whited and Wheless,* 246 U. S. 552, 561), it is not unreasonable to assume that Section 8 was intended to apply only to patents and not to other forms of conveyance.[5]

But assuming that the Act of March 3, 1891, applies to certifications, that Act is no bar to this proceeding. The present suit is one in aid of the 1914 decree. So far as the Carbon County Land Company and the Independent Coal & Coke Company are concerned, it is the law of this case that the present suit "is not a suit to cancel the certification." *Independent Coal Co.* v. *United States,* 274

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forth the fraud of the Milners in securing the certifications. It prayed that the certifications should be declared null and void, that the contracts with the State be set aside, and that all clouds upon the title of the United States be removed. (No. 849, R. 165–183.) At the same time the opinion of this Court in *Williams* v. *United States*, 138 U. S. 514, which establishes that the State of Utah was not a necessary party to the original suit, was cited to the Board. (No. 849, R. 246.) Under these circumstances we submit that, in equity at least, the 1914 decree is *res adjudicata* against the State of Utah. See *Kapiolani Estate* v. *Atcherley*, 238 U. S. 119, 139.

[5] See Point V, pp. 24–32, in the brief for the United States in *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, No. 300, October Term, 1926.

U. S. 640, 650, *supra*. No reason appears why the statute should bar the present proceeding against the State when it does not bar the suit as to the two companies. It is true that the amended bill of the United States asked *in the alternative* that the original certifications to the State of Utah be cancelled, but the decree did not purport to cancel such certifications, and as the court below pointed out (R. 593), "the primary relief sought against the state is the same as that against the companies—to impress a trust on such title as it has in aid of the 1914 decree." (See No. 849, R. 84-85.)

That the present suit is not one to cancel the original certifications would seem to be obvious from the fact that no need exists to cancel such certifications in order for the United States to perfect its title. In 1920 the State patented the lands to the Carbon County Land Company, which company thereupon gave a mortgage to the State to secure the purchase price and transferred part of the lands to the Independent Coal & Coke Company. Since the United States possessed the equitable title to the land by virtue of the 1914 decree, and since nothing happened thereafter to cut off this equitable ownership, all that is necessary for the completion of its title is a conveyance by the two companies and a cancellation of the mortgage. In *Independent Coal Co. v. United States*, 274 U. S. 640, *supra*, this Court said (p. 648):

> It having been adjudicated that the government is the true owner of whatever rights

> the Land Company acquired under the earlier contracts with the state, the decree must be deemed either to have transferred those rights to the government or to have determined that the government is equitably entitled to have them so transferred. If the former, the government may assert the rights under the contract against the Land Company, as holder of the legal title, as it might against any other purchaser of the land from the state with notice. *Bird* v. *Hall*, 30 Mich. 374. If the latter, the Land Company could not acquire the lands even through a new and independent contract without a surrender of such rights as it had under the earlier contracts; and it could not make the surrender effective against the United States, the real owner, without its assent, unless the state stood in the position of a purchaser for value without notice. *To these rights the government is equitably entitled, and hence may at its election claim the benefit of their proceeds in the hands of the Land Company.* (Italics ours.)

We believe that the claim of the State of Utah is without substance and that its foundation, if any, rests upon the frailest kind of technicality. We submit that the position of the State is accurately described by the following statement of the court below (No. 849, R. 593):

> That the state has no just claim to these lands is clear. It is in no sense a purchaser for value. It was an innocent conduit through which wrongdoers procured certifi-

> cations by misrepresentation of facts. Mineral lands were not granted to the state. It is true that these 5,564.28 acres stand charged to Utah, but the charge is easily removed, and non-mineral lands can be selected in lieu thereof. As a matter of fact, the state's position in this case is not entirely worthy of it. Asserting its own innocence, it seeks now to appropriate the benefits of the misrepresentation of others, and to secure valuable land which was not granted to it.

The claims of the Carbon County Land Company and its assignee, the Independent Coal & Coke Company, No. 877, appear to have no basis whatsoever. In *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, *supra*, this Court said (pp. 646–647):

> The decree in that suit is conclusive that the company [Carbon County Land Company] was a party to the fraudulent scheme or conspiracy to acquire title to the public lands by using the state and its officials as agencies to procure the transfer. The decree not only established that the United States was the true and full owner of the land to the exclusion of the defendants, but perpetually enjoined them from setting up or making any claim to the lands. This and the issues of fact there resolved in favor of the United States and pleaded here, lead to the conclusion that none of the defendants, nor any claiming under them with notice, *could by*

> *any legal device, however ingenious, acquire title from the state free from the taint of their fraud.* (Italics ours.)
>
> * * * * *
>
> Equity may follow the property until it reaches the hands of an innocent purchaser for value. Even then the wrongdoer may not reacquire it free of the obligation which equity imposes on one who despoils another of his property by fraud or a breach of trust. The obligation *in personam* to make restitution persists and may be enforced by compelling a return of the property itself whenever and however it comes into his hands.

Assuming that at the time of the execution of the 1920 contract the State of Utah had acquired an unassailable title to the lands in question, it could not convey such title or any interest therein to the *Carbon County Land Company* so that such title or interest would be beyond the reach of the United States under the 1914 decree. It has been definitely and finally adjudicated that the Land Company possesses no standing to attack the decree of the court below. Since the Independent Coal & Coke Company knew all about the 1914 decree and the events leading thereto when it contracted to buy a portion of the lands from the Land Company it stands in no better position than that company.

CONCLUSION

In this brief we have endeavored to set forth our contentions for the guidance of the Court, and

should have no hesitation in opposing the issuance of a writ if a sovereign State were not a petitioner herein. Where one of the States of the Union, engaged in litigation with the United States over title to property, seeks review in this Court, we believe that the mere existence of such a controversy between a State and the United States necessarily presents a question worthy of review in this Court, quite irrespective of the merits of the controversy. For this reason, and this reason alone, we do not oppose the issuance of a writ in this case. If the petition filed by the State of Utah is granted we believe the petition filed by the Land Company should also be granted so that there may be consistency in the final determination of the rights of the parties.

Respectfully submitted.

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